

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BEAR STEARNS MORTGAGE
PASS-THROUGH CERTIFICATES LITIGATION

Master File No.:

This Document Relates To:

JOINT CONFERENCE REPORT

All Actions

In advance of the October 16, 2013 Pretrial Conference, the Parties to the above-captioned action respectfully submit this Joint Conference Report pursuant to the Court’s April 3, 2012 Conference Order (the “Order”) and its July 11, 2013 endorsed order. In accordance with Paragraph 4 of the Order, counsel for the Parties met and conferred telephonically on October 3 and October 7, 2013.

a. **A Concise Statement of the Nature of the Action.** This is a putative class action arising from Defendants' issuance and sale of certain mortgage-backed securities. Plaintiffs assert claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 against Defendants for alleged material misstatements and omissions in the Offering Documents. Defendants deny that the Offering Documents contained misstatements or omissions, and deny that they are liable to Plaintiffs or the proposed class.

Filed on October 29, 2010, the Third Amended Complaint asserts claims based on fourteen (14) offerings. Defendants subsequently moved to dismiss the Third Amended Complaint and, on March 30, 2012, the Court issued an order granting in part and denying in part

the Defendants' motion. *See In re Bear Stearns Mortg. Pass-Through Certificates Litig.*, 851 F. Supp. 2d 746, 767-70, 775-79 (S.D.N.Y. 2012) ("March 30 Order").

On April 13, 2012, Defendants filed a motion requesting a stay of proceedings pending the outcome of the appeal in *Police & Fire Retirement System v. IndyMac MBS, Inc.*, No. 11-cv-2998 ("IndyMac"). ECF No. 173. On May 16, 2012, the Court issued an order staying the action. ECF No. 184.

On September 6, 2012, the Second Circuit decided *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012) ("Goldman"). On October 5, 2012, Plaintiffs filed a Motion for Leave to Amend in light of the decision in *Goldman*. ECF No. 186. That motion is fully briefed.

On June 27, 2013, the Second Circuit decided *IndyMac*, 721 F.3d 95 (2d Cir. 2013). On July 11, 2013, the Court restored this case to the active calendar. ECF No. 193. On July 16, 2013, the Court issued an endorsed letter approving the schedule proposed by the Parties for additional briefing on the impact of *IndyMac* on the scope of the case. ECF No. 194. Defendants filed a motion for reconsideration of the Court's March 30 Order in light of *IndyMac*. ECF No. 199. That motion is fully briefed. *See* ECF Nos. 198-204.

For the Court's convenience, the accompanying table sets forth the disputes over the status of offerings included in the case in light of the Second Circuit's decisions in *Goldman* and *IndyMac*. *See* Exhibit A. Plaintiffs' motion to amend and Defendants' motion for reconsideration are referred to herein as the "Pending Motions."

b. **Related Actions.** The Parties are not aware of any related criminal or civil actions.

c. **The Court's Jurisdiction.** Plaintiffs assert claims under Sections 11, 12(a)(2), and 15 of the 1933 Act, 15 U.S.C. §§ 77k, 77l(a)(2) and 77o. The Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the 1933 Act, 15 U.S.C. § 77v, and 28 U.S.C. § 1331.

d. **Transfer of the Case to a Magistrate Judge.** The Parties do not consent to transfer of the case to a magistrate judge for all pretrial purposes.

e. **Initial Pretrial Conference Checklist.** Pursuant to Section I.A. of the Complex Case Management Report and Exhibit A thereto, the Parties' positions on the Initial Pretrial Conference Checklist are as follows:

1. **Document Preservation.** Each of the Parties represents that it has taken appropriate steps to preserve relevant evidence, including documents. The Parties intend to further discuss electronically-stored information ("ESI") and intend to develop an appropriate plan for the searching and production of relevant ESI. Defendants do not believe it will be necessary, or reasonable, to restore backup tapes.

2. **Initial Disclosures.**

i. **Plaintiffs' Position.** Plaintiffs propose that the Parties exchange initial disclosures within twenty-one (21) days of the October 16, 2013 pretrial conference (*i.e.*, November 6, 2013).

ii. **Defendants' Position.** Defendants propose that the Parties exchange initial disclosures within twenty-one (21) days of the Deadline for Amendments to Pleadings, Additional Parties (as hereinafter defined).

3. Possibility of a Stay or Limitation of Discovery Pending a Dispositive Motion.

Defendants' motion for reconsideration of the Court's March 30 Order is pending. ECF No. 199.

4. Proposed Discovery.

- i. The Parties agree that it will be necessary for each side to exceed the ten (10) depositions per side limit under Federal Rules of Civil Procedure 30(a)(2)(A)(i). The Parties shall meet and confer to determine an appropriate number of depositions per side for this action and preliminarily agree to twenty-five (25) depositions per side without additional agreement or leave of court.
- ii. In lieu of Exhibit B to the Complex Case Management Report (as defined in the Order), the Parties will meet and confer regarding the identification of custodians, search terms, and applicable date ranges for the production of ESI.
- iii. The Parties do not anticipate limitations on the scope of discovery at this time but will meet and confer on this issue, if necessary, after the Parties have exchanged discovery requests.
- iv. **Defendants' Position.** Defendants believe that discovery in this action should commence after the resolution of the Pending Motions.
- v. **Plaintiffs' Position.** Plaintiffs oppose Defendants' request to stay discovery. Rather, discovery should proceed at least for the eight (8) offerings for which there is no dispute, as well as into areas that overlap

with the fourteen (14) additional offerings that are subject to the Pending Motions.

5. **Schedule.** The Parties propose that the Court enter the following pretrial schedule:

ACTION	PLAINTIFFS' SCHEDULE	DEFENDANTS' SCHEDULE ¹
Exchange of Initial Disclosures	November 6, 2013	21 days after the Deadline for Amendments to Pleadings, Additional Parties
Further Case Management Conference	December 13, 2013	To be set by the Court
Deadline for Amendments to Pleadings, Additional Parties	January 31, 2014	21 days after resolution of the Pending Motions
Class Certification Motion	April 11, 2014	180 days after resolution of the Pending Motions
Opposition to Motion for Class Certification (including any expert report submitted in opposition to class certification)	July 11, 2014	90 days after Class Certification Motion
Class Certification Reply	September 5, 2014	60 days after Opposition to Motion for Class Certification
Substantial Completion of Document Productions	September 12, 2014	365 days after discovery commences
Fact Discovery Cut-Off	December 12, 2014	150 days after Substantial Completion of Document Productions
The Party With The Burden of Proof Exchanges Expert Reports	January 9, 2015	75 days after Fact Discovery Cut-Off
Parties Exchange Rebuttal Expert Reports	February 13, 2015	45 days after the Party with the Burden of Proof Exchanges Expert Reports
Expert Discovery Cut-Off	March 6, 2015	60 days after Parties Exchange Rebuttal Expert Reports
Summary Judgment Motions	March 27, 2015	45 days after Expert Discovery Cut-Off

¹ The dates in Defendants' proposed schedule are tied to resolution of the Pending Motions.

ACTION	PLAINTIFFS' SCHEDULE	DEFENDANTS' SCHEDULE ¹
Summary Judgment Oppositions	May 8, 2015	60 days after Summary Judgment Motions
Summary Judgment Replies	June 5, 2015	45 days after Summary Judgment Oppositions
Parties Exchange Witness Lists	14 days prior to Final Joint Trial Report	45 days prior to Trial
Final Joint Trial Report	10 days prior to the Pretrial Conference	60 days prior to Trial
Pretrial Conference	14 days prior to Trial	14 days prior to Trial
Trial	August 3, 2015, or as set by the Court	60 days after filing the Joint Trial Report

6. Motion Practice.

- i. As summarized above, there are two Pending Motions that will affect the scope of this case: (1) Plaintiffs' Motion to Amend the Complaint in light of *Goldman*, and (2) Defendants' Motion for Partial Reconsideration of the Court's March 30 Order. Both motions are fully briefed.
- ii. In addition, Plaintiffs anticipate that they will move, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), to certify the proposed class. Defendants plan to oppose Plaintiffs' motion for class certification.
- iii. Plaintiffs and Defendants anticipate filing motions for summary judgment and/or summary adjudication, but will finally determine the grounds for such motions following the close of fact discovery.

7. Expert Witnesses and Expert Discovery. The Parties agree that expert testimony will be necessary, including expert testimony related to the issue of class certification. The Parties will not waive expert depositions.

8. **Damages.** The Securities Act sets forth the measure of damages for the Section 11 and 12(a) claims at issue here. 15 U.S.C. § 77k(e), (g), § 77l. Defendants dispute the existence and amount of any alleged loss or damages.

f. **Settlement Discussions or Mediation.** There have been no settlement discussions to date.

Plaintiffs' Position. Plaintiffs and their counsel are experienced in private mediation and agree to remain in communication regarding the possibility of resolving the case.

Defendants' Position. Defendants agree to communicate periodically with Plaintiffs to discuss whether the opportunity exists for productive settlement discussions or mediation. Defendants believe that settlement discussions would not be productive until the Court issues decisions on the Pending Motions, clarifying the scope of this case.

g. **Trial.** Plaintiffs estimate that a trial may last between fifteen (15) and twenty (20) trial days. Defendants believe that this will be a complicated and lengthy trial, and are unable to estimate the length of trial at this time.

Dated: October 9, 2013

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Exhibit A**In re: Bear Stearns Mortgage Pass-Through Litigation**
Status of Offerings Remaining in Action and in Dispute

Offering	Status
BSMF 2006-AR1	Remains in action. ¹
SAMI 2006-AR5	Remains in action.
SAMI 2006-AR6	Remains in action.
BSARM 2007-3	Remains in action.
SAMI 2006-AR7	Remains in action.
BSMF 2006-AR4	Remains in action.
BSMF 2006-AR5	Remains in action.
BSARM 2007-1 (Groups 1, 3, 5 only)	Remains in action.
BALTA 2006-6	Disputed.
BALTA 2006-8	Disputed.
BALTA 2007-1	Disputed.
BSARM 2006-4	Disputed.
SAMI 2007-AR1 (Group 1 only)	Disputed.
SAMI 2007-AR2 (Group 1 only)	Disputed.
SAMI 2006-AR4	Disputed.
BSMF 2006-AR2	Disputed.
SAMI 2006-AR8	Disputed.
BSMF 2006-AR3	Disputed.
BSMF 2007-AR1	Disputed.
BSMF 2007-AR3	Disputed.
BALTA 2006-5	Disputed.
BALTA 2006-7	Disputed.

¹ Subject to Defendants' reservation of their argument that all plaintiffs were on inquiry notice of their claims more than one year before they sued, or any other applicable defense. *See* Defendants' Mem. in Support of Reconsideration in Light of *Indymac*, ECF No. 201, July 23, 2013, at 6 n.3.